

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TOLEDO MACK SALES &  
SERVICE, INC.,

Plaintiff,

v.

MACK TRUCKS, INC.

Defendant.

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Civil Action No. 2:02-CV-04373-RLB

JURY TRIAL DEMANDED

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MACK TRUCKS, INC.,

Counterclaim  
Plaintiff,

v.

TOLEDO MACK SALES & SERVICE,  
INC.,

Counterclaim  
Defendant.

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JURY TRIAL DEMANDED

**PLAINTIFF/COUNTERCLAIM DEFENDANT TOLEDO MACK, INC.'S  
MEMORANDUM OF LAW IN PARTIAL OPPOSITION TO  
DEFENDANT/COUNTERCLAIM PLAINTIFF MACK TRUCKS, INC.'S MOTION FOR  
THE ADMISSION OF CERTAIN TRIAL EXHIBITS INTO EVIDENCE**

Mack Trucks, Inc. ("Mack") has moved for the admission of numerous exhibits into evidence. Toledo Mack, Inc. ("Toledo Mack") objects to the admission of certain of these exhibits as detailed below. The parties have conferred regarding Toledo Mack's objections and Mack has agreed to withdraw the following exhibits from its Motion: D-375, D-393 and D-406.

Exhibits D-375 and D-393 are pleadings from this case filed by PAI Industries. Exhibit D-406 consists of the declaration of Navid Yavari dated November 8, 2002. Toledo Mack objected to all three of these exhibits as hearsay and it is now Toledo Mack's understanding that they will not be in evidence.

The parties have not reached an agreement as to the following exhibits: D-1497 through D-1519, inclusive, all of which are demonstrative exhibits used by counsel for Mack during the course of the trial. Toledo Mack objects to all of these exhibits on the grounds that they contain hearsay and improper argument by counsel. All of these exhibits include argumentative headings that are more properly used during closing argument than given to the jury for use during deliberations. Mack argues that these exhibits include charts that fall within the scope of Federal Rule of Evidence 1006 (governing summary charts), but that Rule certainly does not contemplate the inclusion of counsel's argument and interpretation of the evidence contained in the headings of these exhibits. The text and commentary contained in Mack's demonstrative exhibits are hearsay and improper argument by counsel and, as such, these exhibits should not be used by the jury during deliberations.

For all the foregoing reasons, Toledo Mack respectfully requests that the Court deny Mack's Motion to the extent that Mack seeks to admit into evidence Exhibits D-1497 through D-1519, inclusive.

Respectfully Submitted,

DUANE MORRIS LLP

Date: October 10, 2006

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Attorneys for Plaintiff/Counterclaim  
Defendant Toledo Mack Sales & Service,  
Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Partial Opposition to Defendant's Motion for the Admission of Certain Trial Exhibits was served on this 10th day of October, 2006 via hand delivery on the following counsel:

Jeremy Heep, Esquire  
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Philadelphia, PA 19103-2799

/s/ Wayne A. Mack

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**ORDER**

And now, on this \_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of Mack Trucks, Inc.'s Motion for the admission of certain exhibits into evidence, and Toledo Mack, Inc.'s response thereto, it is hereby ORDERED that:

1. The Motion is GRANTED in part and DENIED in part.
2. Defendant's demonstrative exhibits numbered D-1497 through D-1519, inclusive, are not admitted into evidence.
3. The following exhibits are not admitted into evidence: Defendant's exhibits numbered D-375, D-393 and D-406.

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Buckwalter, J.